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Attorneys for Defendant
POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	CIVIL NO. CV03-00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	PCT'S PROPOSED VERDICT
vs.)	FORMS
)	
HAWAIIAN EXPRESS SERVICE,)	Judge: Hon. Susan O. Mollway
INC., et al.,)	
Defendants.)	Trial Date: January 24, 2006
)	

VERDICT FORM

1. Did Wayne Berry prove by a preponderance of the evidence that defendants' infringing actions caused Berry actual damages between April 1, 2003 and June 9, 2003? Do not consider issues of Fleming's profit in answering this question.

___ Yes (Go to question 2)

___ No (Go to question 3)

2. State the amount of Wayne Berry's actual damages. Again, do not consider issues of Fleming's profit in answering this question.

\$ _____ (Go to question 3)

3. Did Wayne Berry prove by a preponderance of the evidence that Fleming profited between April 1, 2003 and June 9, 2003?

___ Yes (Go to question 4)

___ No (Stop. Do not answer questions 4, 5, or 6. Sign verdict form.)

4. Did Fleming vicariously infringe Berry's copyright in his freight tracking software?

___ Yes (If you answered "yes" to question 3, go to question 5)

___ No (If you answered "yes" to question 3, go to question 5)

5. Did Wayne Berry prove by a preponderance of the evidence a causal connection between any Fleming profit between April 1, 2003 and June 9, 2003 and infringing use of Berry's freight tracking software?

___ Yes (If you answered yes to question 5, go to question 6)

___ No (Stop. Do not answer question 6. Sign verdict form.)

6. State the amount of Fleming profit between April 1, 2003 and June 9, 2003 was caused by infringing use of Berry's software.

\$ _____ (Sign verdict form.)

Dated: January __, 2006

_____ (foreperson)

SUPPLEMENTAL VERDICT FORM

7. What amount of statutory damages do you award Wayne Berry for defendants' infringing actions between April 1, 2003 and June 9, 2003? Your award may be no lower than \$200 nor may your award be higher than \$30,000.

\$ _____

Dated: January __, 2006

_____ (foreperson)

Dated: Honolulu, Hawaii, January 10, 2006.

KOBAYASHI, SUGITA & GODA /s/ *Thomas H. Yee*
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THE POST CONFIRMATION TRUST
FOR THE FLEMING COMPANIES, INC.

and

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